



California Fair Political Practices Commission

November 17, 1989

Arthur Forcier
AFT College Guild
Local 1521, American Federation
of Teachers, AFL-CIO
617 West 7th Street, Suite 610
Los Angeles, CA 90017

Re: Your Request For Assistance
Our File No. I-89-529

Dear Mr. Forcier:

You have requested assistance concerning the campaign provisions of the Political Reform Act (the "Act").^{1/} We are unable to provide advice concerning past conduct. Therefore, we treat your request as one for informal assistance rather than formal advice.^{2/} I hope the following general guidance is of assistance to you.

You describe a hypothetical situation in which an entity prepares and pays for campaign literature to support candidates. The entity's intention is that the payments for the literature be independent expenditures. We will address two situations you have posed which may occur in connection with the mailings:

(1) The entity has an arrangement with the vendors for the mailing whereby the vendors may contact the candidates supported and suggest that the candidates "might buy certain mailers or pay the rest of a mailer" for which the entity paid part.

1/ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

2/ Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

(2) A representative of the entity was making mailing purchases for one of the candidates. You have asked whether, under these facts, the nature of the payments made by the entity to support the same candidate would change to "contributions" to the candidates, rather than independent expenditures.

"Independent expenditure" is defined in the Act as:

... an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.

(Section 82031.)

A payment which is "made at the behest" of a candidate or committee is not an "independent expenditure." (Section 82031.) It is a "contribution" to the candidate or committee. (Section 82015.) A payment is "made at the behest" of a candidate or committee if it is made:

... under the control or at the direction of, in cooperation, consultation, coordination, or concert with, or at the request or suggestion of a candidate, controlled committee,...

(Regulation 18215, copy enclosed.)

With regard to the situation described in (1) above, although we cannot give a definitive answer, it would appear that, under the circumstances presented, the expenditures made by the entity would be in-kind contributions to the candidates rather than independent expenditures. This is because, in the situation you describe, it would appear that the mailings would be done pursuant to an established procedure whereby the entity makes expenditures for mailings with the understanding that the candidates will pay a portion of the costs, or will be provided with the opportunity to purchase a portion of the materials. We believe such an arrangement would constitute coordination between the entity and the candidates. Therefore, the payments would be deemed to be "at the behest" of the candidates and would be contributions pursuant to Section 82015 and Regulation 18215.

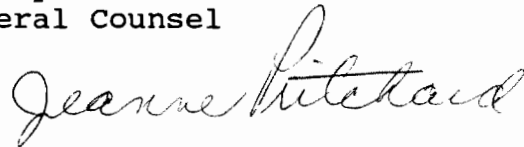
With regard to the situation presented in item (2) above, the involvement of a representative of the entity in a candidate's campaign does not automatically make the entity's payments for a

mailer supporting the candidate an in-kind contribution rather than an independent expenditure. However, any payment for a mailing which supports a candidate would be at the behest of the candidate and would, therefore, be a contribution, if the payment were made "under the control or at the direction of, in cooperation, consultation, coordination, or concert with, or at the request or suggestion of" the candidate. Contact by a representative of an entity with a candidate concerning a mailer to be paid for by an entity could constitute "cooperation, consultation or coordination" and, therefore, payments for the mailer could be contributions to the candidate rather than independent expenditures.

I hope this letter is helpful. If you have any questions, please call me at (916) 322-5662.

Sincerely,

Kathryn E. Donovan
General Counsel

A handwritten signature in cursive script that reads "Jeanne Pritchard".

By: Jeanne Pritchard
Division Chief
Technical Assistance and
Analysis Division

Daniel M. Jonas

1635 Santiago Ave.
Napa, CA 94558

FPFC
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September 7, 1989

California State Fair Political Practices Commission
Attn: Diane Griffiths
428 "J" St., Suite 800
P.O. Box 807
Sacramento, CA 95804

Dear Ms. Griffiths,

I am writing you with some background in an effort to get a ruling on my eligibility to vote as a County Planning Commissioner on an upcoming matter. I am the Chairman of the Napa County Conservation, Development and Planning Commission. I am a real estate developer and develop residential and commercial properties exclusively. My wife is a real estate agent working for Coldwell Banker, Classical Properties (a residential affiliate of Coldwell Banker).

The Napa County Conservation, Development and Planning Department is currently processing a Master Environmental Document that will attempt to identify, quantify and define the consequences of past, current and future winery development in Napa County. This process may redefine what are currently allowed practices at either current or future wineries.

Our Planning Commission consists of five (5) members. Two members are directly involved in the industry, either as winery employees or growers. The other two members appear to have no conflict of interest of any kind.

My potential problem arose a short time ago when my wife listed for sale a small winery operation. I have no direct or indirect sources of income from the wine industry otherwise. It is clearly a possibility that the Planning Commission's decision regarding the Master Environmental Process may affect the value of existing wineries. The commission my wife may earn is a percentage of sale, as is standard in that industry. I want to point out that no offer has been submitted on this listing, no sale is pending and it is even probable that given the small size, location and lack of development of this winery currently that it may not sell at all.

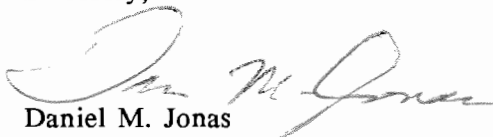
Obviously a problem for the County of Napa arises out of this situation. If one other Planning Commissioner did not have any conflict of interest my abstention from this decision would not create a problem with a majority participation. Also, of the Commissioners with a conflict, mine is probably the least and more remote and in fact is created by the community property aspect of the situation.

You may well recall that a former and different Planning Commission (only one holdover member) had this same problem with three (3) commissioners with direct ties to the wine industry from either direct employment or spouses direct employment. They were required to draw straws, I believe, to determine which of the three could vote on broad wine industry issues.

I hope that you can review this situation soon and provide the appropriate course of action for me to take. I believe that my conflict is clearly lower in magnitude than the other two commissioners involved. I'm not sure under the rules whether that makes any difference.

My office phone number is (707) 255-8494 if you need additional information please let me know.

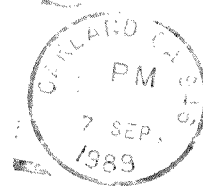
Sincerely,



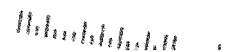
Daniel M. Jonas



...old Inc.
P.O. Box 2064
Napa, CA 94558



California State Fair Political Practice
Attn: Diane Griffiths
428 "J" Street, Suite 800
P.O. Box 807
Sacramento, CA. 95804





California Fair Political Practices Commission

September 12, 1989

Arthur Forcier
AFT College Guild
617 West 7th Street, Suite 610
Los Angeles, CA 90017

Re: Letter No. 89-529

Dear Mr. Forcier:

Your letter requesting advice under the Political Reform Act was received on September 8, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Jeanne Pritchard".

Jeanne Pritchard
Chief Technical Assistance
and Analysis Division

Handwritten initials, possibly "Jy" or "JH", in cursive script.

JP:plh